

IN THE DISTRICT COURT OF ROCK COUNTY, NEBRASKA

**SANDHILLS CATTLE FEEDING,
INC., a Nebraska corporation,**
Plaintiff,

vs.

K LAZY K RANCH, INC.,
Defendant.

Case No. CI02-5

JOURNAL ENTRY ON TRIAL

DATE OF TRIAL: February 25-27, 2003.

APPEARANCES:

For plaintiff: Galen E. Stehlik with Larry Carlson, plaintiff's corporate representative.

For defendant: John P. Heitz with Jerry Kusser, defendant's corporate representative.

SUBJECT: Jury Trial.

PROCEEDINGS:

Tuesday, February 25, 2003:

The clerk displayed the juror orientation video. After introductory comments, the court administered the examination oath to the jury panel. The clerk drew the names of 15 prospective jurors. The court conducted voir dire examination. During the court's examination and without objection, the court excused five prospective jurors for cause and in each instance the clerk drew a replacement name and the court examined the replacement panel member. The court admonished the panel and declared the mid-morning recess.

Following the recess, counsel for plaintiff then conducted voir dire examination. The plaintiff passed the panel for cause. Counsel for defendant waived voir dire examination and passed the panel for cause. Counsel for plaintiff and counsel for defendant exercised peremptory challenges to the panel of 15 prospective jurors. The court administered the trial oath to and admonished the trial jury of 7 persons, consisting of:

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[deleted]

The court discharged the balance of the panel and briefly paused to allow those wishing to leave an opportunity to exit. The court gave preliminary instructions to the jury. Counsel for plaintiff presented an opening statement. Counsel for defendant presented an opening statement. The parties jointly moved to amend paragraph 11.C. of the pretrial order to waive witness sequestration. The court granted the motion and declared witness sequestration to be waived. The court admonished the jury and recessed the trial for lunch.

Following the lunch recess, the jury returned. The plaintiff adduced evidence. Larry Carlson testified upon oath. During cross examination, the court admonished the jury and recessed the trial briefly. Counsel resumed and concluded the examination. Dr. Brian K. Welborn, Keith Wright, Diane Van Uden, and Carmen Carpenter testified upon oath. The plaintiff rested. The court admonished the jury and excused the jury from the courtroom. In the absence of the jury, the defendant verbally moved for a directed verdict on the plaintiff's petition. Both counsel presented arguments. The court denied the motion and recessed the trial.

The defendant adduced evidence. Jerry Kusser testified upon oath. During direct examination, the court admonished the jury and recessed the trial for the day to resume on Wednesday, February 26, 2003, at 9:00 a.m.

Wednesday, February 26, 2003:

The trial resumed with all counsel and corporate representatives present. Counsel resumed and concluded the examination of Jerry Kusser. The court admonished the jury and declared the mid-morning recess. Following the recess, Robert Sears and R.D. Harmon testified upon oath. The court admonished the jury and recessed the trial for lunch.

Following the lunch recess, R.D. Harmon testified further upon oath. Kenneth Willert, Joe Kusser, and Tigh Cowan testified upon oath. During direct examination of Tigh Cowan, the court admonished the jury and declared a brief recess. Following the recess, counsel resumed and concluded the examination. The defendant rested.

The court admonished the jury and excused the jury from the courtroom. In the absence of the jury, the plaintiff verbally moved for a directed verdict on the defendant's counterclaim and further for directed verdict on the plaintiff's petition. Counsel for plaintiff presented argument. Counsel for defendant presented argument, during which the defendant verbally moved for leave to amend the counterclaim by interlineation to conform to the proof. Counsel for defendant specifically stated the proposed amendments. Counsel for the plaintiff objected to the proposed amendments and both counsel presented arguments. The court granted the motion to amend over objection and allowed the amendment by interlineation, and defendant's counsel made such amendments immediately by interlineation. Counsel completed their arguments on the remaining motions for directed verdict. The court denied the motion pertaining to the plaintiff's petition. The court denied the motion pertaining to the defendant's counterclaim on the issue of a claimed breach of contract to not charge more than 45 cents per pound of gain, but sustained the motion on all other issues of the defendant's counterclaim. The parties declined the offer of recess, and the jury returned.

The plaintiff adduced evidence on rebuttal. Joseph W. Peschel testified upon oath. Larry Carlson testified further upon oath. The plaintiff rested on rebuttal. The court admonished the jury and excused the jury for the day to return at 10:00 a.m. on Thursday, February 27, 2003. The court held an informal instruction conference in chambers with both counsel. The court recessed the trial to 8:30 a.m. on Thursday, February 27, 2003.

Thursday, February 27, 2003:

The trial resumed with all counsel and corporate representatives present, in the absence of the jury. A formal instruction conference was held in open court. There were no motions at the close of all evidence. The court's proposed instructions Nos. 1 through 14, inclusive, and the proposed verdict form were considered. Except for a technical objection to preserve claim of error on the ruling on motions for directed verdict, neither party objected to the proposed instructions and verdict form. The defendant made its

technical objection to Instructions Nos. 4 and 11 solely to preserve its claim of error on the directed verdict against defendant on the issue of gain of less than 3½ pounds per day per animal, and its technical request for an additional instruction on that issue. The court noted, and counsel for plaintiff agreed, that the substance of such proposed instruction was known to court and counsel without submission of specific written request. Counsel presented their arguments or reaffirmed their previous arguments. The court overruled the technical objection and denied the technical request for additional instruction. Neither party requested any additional requested instructions.

Time limits of 25 minutes per side for closing arguments, with the limitation that no more time may be consumed in rebuttal than was consumed in the initial portion of such party's closing argument. At defendant's request and without objection, the defendant shall be allowed rebuttal argument solely on the issues of the defendant's counterclaim after the plaintiff's rebuttal argument. The time limits include all rebuttal argument time.

All counsel stipulated that counsel may be excused during jury deliberations, and that in their absence any written communication may take place between the court and the jury and further written instructions may be given, and the verdict may be received in the absence of counsel and the absence of the parties without further notice. The court approved the stipulation, but will nevertheless attempt to reach counsel in the event of questions or a verdict. The court recessed the trial pending the return of the jury at 10:00 a.m.

The jury returned, with all counsel and party representatives present. Counsel for plaintiff presented closing argument. Counsel for defendant presented closing argument. Counsel for plaintiff presented rebuttal argument. Counsel for defendant presented rebuttal argument. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 11:05 a.m. The jury retired to the jury room.

At approximately 11:42 a.m., the court received a written communication from the jury requesting a calculator, which was duly filed by the clerk. After consulting with the court, the bailiff provided a standard electronic calculator to the jury.

At 2:14 p.m., in the presence of plaintiff's corporate representative without counsel and in the presence of defendant's counsel and corporate representative, the jury returned and announced that it had reached a verdict. The clerk filed and read aloud the verdict form in open court, wherein the jury rendered its verdict for the defendant on the plaintiff's claim and for the defendant in the amount of \$15,233.66 on the defendant's counterclaim. The court inquired if it was their unanimous verdict, and all seven jurors responded affirmatively by show of hands. Both parties waived further polling of the jury. The verdict was accepted by the court. The jury was discharged with the thanks of the court. Judgment will be entered on the verdict by separate writing.

ORDER: IT IS THEREFORE ORDERED that:

1. The jury verdict is accepted and the jury is discharged with the thanks of the court.
2. Judgment will be entered on the verdict by a separate writing.

Signed at **Bassett**, Nebraska, on **February 27, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.
If checked, the court clerk shall:



Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.



If not already done, immediately transcribe trial docket entry dictated.
Done on _____, 20____ by _____.

BY THE COURT:

William B. Cassel
District Judge

Mailed to: